

§ 5.43

FEMA shall not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) For commercial use requesters, if the direct cost of searching for, reviewing for release, and duplicating the records sought would not exceed \$30.00, FEMA shall not charge the requester any costs.

(2) For requests from representatives of news media or educational and non-commercial scientific institutions, excluding the first 100 pages which are provided at no charge, if the duplication cost would not exceed \$30.00, FEMA shall not charge the requester any costs.

(3) For all other requests not falling within the category of commercial use requests, representatives of news media, or educational and noncommercial scientific institutions, if the direct cost of searching for and duplicating the records sought, excluding the first two hours of search time and first 100 pages which are free of charge, would not exceed \$30.00, FEMA shall not charge the requester any costs.

[52 FR 13677, Apr. 24, 1987]

§ 5.43 Waiver or reduction of fees.

(a) FEMA may waive all fees or levy a reduced fee when disclosure of the information requested is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester.

(b) A fee waiver request shall indicate how the information will be used, to whom it will be provided, whether the requester intends to use the information for resale at a fee above actual cost, any personal or commercial benefits that the requester reasonably expects to receive by the disclosure, provide justification to support how release would benefit the general public, the requester's and/or intended user's identity and qualifications, expertise in the subject area and ability and intention to disseminate the information to the public.

[52 FR 13678, Apr. 24, 1987]

44 CFR Ch. I (10–1–99 Edition)

§ 5.44 Prepayment of fees.

(a) When FEMA estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00, FEMA may require a requester to make an advance payment of the entire fee before continuing to process the request.

(b) When a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), FEMA may require the requester to pay the full amount owed plus any applicable interest as provided in § 5.46(d), and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(c) When FEMA acts under paragraphs (a) or (b) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from the receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after FEMA has received fee payments described under paragraphs (a) or (b) of this section.

[52 FR 13678, Apr. 24, 1987]

§ 5.45 Form of payment.

Payment shall be by check or money order payable to the Federal Emergency Management Agency and shall be addressed to the official designated by FEMA in correspondence with the requestor or to the Headquarters FOIA Officer or Regional FOIA Officer, as appropriate.

[44 FR 50287, Aug. 27, 1979, as amended at 48 FR 44542, Sept. 29, 1983]

§ 5.46 Fee schedule.

(a) *Manual searches for records.* FEMA will charge at the salary rate(s), (i.e., basic hourly pay rate plus 16 percent) of the employee(s) conducting the search. FEMA may assess charges for time spent searching, even if the agency fails to locate the records or if records located are determined to be exempt from disclosure. FEMA may assess charges for time spent searching, even if FEMA fails to locate the

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records or if records located are determined to be exempt from disclosure.

(b) *Computer searches for records.* FEMA will charge the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search. FEMA may assess charges for time spent searching, even if FEMA fails to locate the records or if records located are determined to be exempt from disclosure.

(c) *Duplication costs.* (1) For copies of documents reproduced on a standard office copying machine in sizes up to 8½x14 inches, the charge will be \$.15 per page.

(2) The fee for reproducing copies of records over 8½x14 inches or whose physical characteristics do not permit reproduction by routine electrostatic copying shall be the direct cost of reproducing the records through government or commercial sources. If FEMA estimates that the allowable duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(3) For copies prepared by computer, such as tapes or printouts, FEMA shall charge the actual cost, including operator time, of production of the tape or printout. If FEMA estimates that the allowable duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(4) For other methods of reproduction or duplication, FEMA shall charge the actual direct costs of producing the document(s). If FEMA estimates that

the allowable duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(d) Interest may be charged to those requesters who fail to pay fees charged. FEMA may begin assessing interest charges on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(e) FEMA shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. FEMA may choose to contract with private sector services to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as but not limited to the Government Printing Office or the National Technical Information Service, FEMA will inform requesters of the steps necessary to obtain records from those sources.

[52 FR 13678, Apr. 24, 1987, as amended at 52 FR 33410, Sept. 3, 1987]

§ 5.47 Appeals regarding fees.

A requestor whose application for a fee waiver or a fee reduction is denied may appeal that decision to the Deputy Director in the manner prescribed in subpart D.

Subpart D—Described Records

§ 5.50 General.

(a) Except for records made available pursuant to subpart B, FEMA shall promptly make records available to a requestor pursuant to a request which